

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In Re Application of)	
)	File No. EB-03-IH-0555
Milton Goodman)	NAL/Acct. No. 200432080302
)	FCC Account ID No. 0501643234
Applicant For Narrowband PCS Facilities)	FRN 0009415233
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 14, 2004**Released: September 14, 2004**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we find Milton Goodman, an applicant in two Commission narrowband PCS spectrum auctions,¹ apparently liable for a monetary forfeiture in the amount of \$10,000. For the reasons stated below, we conclude that Mr. Goodman apparently willfully violated a Commission order by failing to respond fully and in writing to a directive of the Enforcement Bureau ("Bureau") requiring that he provide certain information and documents concerning his participation in these auctions and his communications during the auctions with Linda Taylor, another applicant in the auctions.²

II. BACKGROUND

2. In November 2003, the Enforcement Bureau received information from the Wireless Telecommunications Bureau that Mr. Goodman and Ms. Taylor, competing applicants in Auction No. 50 and Auction No. 51, may have discussed auctions-related matters during a time when communications between auction applicants about bids and bidding strategy were restricted by section 1.2105(c) of the Commission's rules.³ Subsequently, the Bureau began an investigation to determine whether the

¹ The Commission's September 24-26, 2003, Narrowband PCS Spectrum Auction ("Auction No. 50") and the September 24-25, 2003, Regional Narrowband PCS Spectrum Auction ("Auction No. 51").

² See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division of Commission's Enforcement Bureau, to Milton Goodman, dated May 3, 2004.

³ 47 C.F.R. § 1.2105(c). Section 1.2105(c)(1) states, in pertinent part: "[A]fter the [FCC Form 175] short-form application filing deadline, all applicants for licenses in any of the same geographic license areas are prohibited from cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other's, or any other competing applicant's bids or bidding strategies, or discussing or negotiating settlement agreements, until after the down payment deadline, unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder's short-form application pursuant to § 1.2105(a)(2)(viii)." 47 C.F.R. § 1.2105(c)(1). This rule is known as the "anti-collusion" rule.

communications between Mr. Goodman and Ms. Taylor had violated the anti-collusion rule.⁴ As a part of its investigation, on May 3, 2004, the Bureau sent a letter of inquiry to Mr. Goodman seeking information regarding such matters as the relationship between Mr. Goodman and Ms. Taylor and the dates and content of any auction-related communications with each other during the auctions.⁵ The letter directed Mr. Goodman to respond in writing within 14 days and to provide copies of all documents relevant to the investigation. It also required that Mr. Goodman provide a declaration verifying the truth and accuracy of any information provided.⁶ On May 28, 2004, Mr. Goodman telephoned Bureau staff and stated that he had just returned home from a trip and received the Bureau's letter. He stated that he would file his written response to the letter the next week. More than three months later, however, Mr. Goodman still has not responded or provided the information or documents required by the Bureau's letter of inquiry.

III. DISCUSSION

3. Under section 503(b)(1) of the Act and section 1.80(a) of the Commission's rules, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁷ In order to impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.⁸ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has willfully or repeatedly violated the Act or a Commission rule.⁹

⁴ See *supra*, note 2. The communications between Mr. Goodman and Ms. Taylor reportedly occurred between August 8 and 21, 2003, after the August 8, 2003 short form filing deadline for both auctions and prior to the October 2003 down payment deadlines for both auctions. See Public Notice, *Narrowband PCS Spectrum Auction Revised Inventory and Start Date for Auction No. 50*, DA 03-372 (WTB rel. February 7, 2003); Public Notice, *Auction of Regional Narrowband PCS Licenses Scheduled For September 24, 2003*, DA 03-1994 (WTB rel. June 18, 2003); Public Notice, *Narrowband PCS Spectrum Auction Closes*, DA 03-3012, (WTB rel. October 2, 2003); Public Notice, *Regional Narrowband PSC Spectrum Auction Closes*, DA 03-3006 (WTB rel. October 1, 2003).

⁵ *Supra*, note 1.

⁶ *Id.*

⁷ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1). See also 47 U.S.C. § 312(f)(1). Section 312(f)(1) defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. Consistent with congressional intent, the Commission has interpreted willful in forfeiture proceedings to mean actions or omissions that are committed knowingly (*i.e.*, that a violator intended to commit the act or omission that was found to have violated a statutory and/or regulatory provision). See also 47 U.S.C. § 503(b)(1)(D) (forfeitures for violation of 14 U.S.C. § 1464). Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991) ("*Southern California Broadcasting Co.*"). The Commission may also assess a forfeiture for violations that are merely repeated, and not willful. See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage). "Repeated" means that the act was committed or omitted more than once, or lasts more than one day. *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

⁸ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

⁹ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7591

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4. Section 403 of the Communications Act of 1934, as amended (the “Act”), authorizes the Commission to institute on its own motion any inquiry into, *inter alia*, any matter relating to the enforcement of the Act or the Commission’s rules.¹⁰ Section 308(b) provides that the Commission “may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be granted or denied . . .”¹¹ Pursuant to that and other authority,¹² the Bureau ordered Mr. Goodman to submit a timely written response to its inquiry letter and to provide the information and documents requested. Instead, Mr. Goodman telephoned Bureau staff after the response deadline had passed, verbally denied any wrongdoing and stated that he would promptly file his written responses to the Bureau’s inquiries. To this date, however, Mr. Goodman has not filed the required response. A party cannot ignore the directives in a Bureau inquiry letter.¹³ We therefore conclude that Milton Goodman is apparently liable for a forfeiture for failing to respond to a Bureau order.

5. The Commission has implemented its authority under Section 503 of the Act by adopting forfeiture guidelines and rules that establish uniform base forfeiture amounts for violations.¹⁴ The Commission’s *Forfeiture Policy Statement* sets a base forfeiture amount of \$4,000 for failure to respond to Commission communications.¹⁵ The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁶

6. It appears that Mr. Goodman willfully violated a Bureau order by failing to respond to the Bureau’s letter of inquiry of May 3, 2004. Mr. Goodman’s failure to respond to the Bureau’s inquiries impeded and protracted the Bureau’s investigation into the facts surrounding the communications at issue. The resulting delay in the investigation compromised the Bureau’s ability to respond to the circumstances

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¶4 (2002). In *SBC Communications*, the Commission assessed a \$100,000 forfeiture against a carrier for its willful refusal to supply a sworn declaration in response to an Enforcement Bureau letter of inquiry. The Commission stated: “[T]he order here was squarely within the Commission’s authority and, in any event, parties are required to comply with Commission orders even if they believe them to be outside the Commission’s authority.” *Id.* at ¶ 5. See also *World Communications Satellite Systems, Inc.*, Forfeiture Order, 19 FCC Rcd 2718 (Enf. Bur. 2004) (\$10,000 forfeiture for submitting a jurisdictional objection in lieu of a response to a Bureau inquiry letter); *American Family Ass’n*, Notice of Apparent Liability For Forfeiture, DA 04-2330 (Enf. Bur. rel July 28, 2004); *In re Richard E. LaPierre*, Forfeiture Order, 15 FCC Rcd 23525 (Enf. Bur. 2000) (\$4,000 forfeiture for repeated failure to respond to written Commission inquiries).

¹⁰ See 47 U.S.C. § 403.

¹¹ 47 U.S.C. § 308(b). See also 47 C.F.R. § 73.1015.

¹² See 47 U.S.C. § 154(i),(j).

¹³ See, e.g., *supra*, note 9; *Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304 (2002) (order to show cause to revoke license for, *inter alia*, failure to respond to Bureau inquiry letters).

¹⁴ See 47 C.F.R. § 1.80(b)(4) Note (“Guidelines for Assessing Forfeitures, Section I – Base Amounts for Forfeitures”); see also *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Notice of Proposed Rulemaking, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁵ *Id.*

¹⁶ *Id.* See also 47 U.S.C. § 503(b)(2)(D); *Forfeiture Policy Statement* 12 FCC Rcd at 17100 ¶ 27.

presented in an effective, appropriate and timely manner. In view of the nature and gravity of the violation, we are warranted in exercising our discretion to propose a forfeiture amount of \$10,000.

IV. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Milton Goodman, is hereby NOTIFIED of his APPARENT LIABILITY FOR FORFEITURE in the amount of Ten Thousand Dollars (\$10,000) for willfully failing to fully respond in writing to a Bureau order directing him to do so.

8. IT IS FURTHER ORDERED THAT, pursuant to section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, within thirty (30) days of the release of this NOTICE OF APPARENT LIABILITY, Mr. Goodman SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. Number and FRN referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

10. The response, if any, to this NOTICE OF APPARENT LIABILITY, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C321, Washington DC 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁷

13. Under the Small Business Paperwork Relief Act of 2002, Pub.L.No. 107-198, 116 Stat. 729 (June 28, 2002), the Commission is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and wish to be treated as a small entity for tracking purposes, please so certify to us within 30 days of this NAL, either in his response to the NAL or in a separate filing to be sent to the Investigations and Hearings Division, Enforcement Bureau, 445 12th Street, S.W., Washington, D.C. 20554. Your certification should indicate whether you meet one of the definitions set forth in the list in Attachment A of this NAL. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and

¹⁷ See 47 C.F.R. § 1.1914.

responsibilities pursuant to section 503(b) of the Communications Act of 1934, as amended. If you have any questions regarding any of the information contained in Attachment A, please contact the Commission's Office of Communications Business Opportunities at (202) 418-0990.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

ATTACHMENT A

FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

International Services	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	1,500 Employees or Fewer
Broadband Personal Communications Services (Blocks A, B, D, and E)	
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard -

900 MHz Specialized Mobile Radio	Small Business is \$15M or less average annual gross revenues for three preceding calendar years
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	Very Small Business is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)